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TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1937

No. 38

FIDELITY & DEPOSIT COMPANY OF MARYLAND, PETITIONER,

vs.

LOUIS H. PINK, SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MAY 1, 1937.

CERTIORARI GRANTED JUNE 1, 1937.

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United States District Court

SOUTHERN DISTRICT OF NEW YORK.

At Law—L 56-369.

LOUIS H. PINK, Superintendent of Insurance of the State of New York, as Liquidator of the Southern Surety Company of New York,

Plaintiff,

against

FIDELITY & DEPOSIT COMPANY OF MARYLAND,

Defendant.

Statement Under Rule XIII

This action was commenced on January 20, 1934, by the filing by plaintiff in the office of the Clerk of the District Court for the Southern District of New York of a praecipe and the issuing of a summons from said Court to defendant.

The plaintiff named in the complaint was George S. Van Schaick, Superintendent of Insurance of the State of New York, as Liquidator of the Southern Surety Company of New York. By order of Hon. Henry W. Goddard, United States District Judge for the Southern District of New York, dated and filed October 16, 1935, the name of plaintiff was changed to Louis H. Pink, Superintendent of Insurance of the State of New York, as Liquidator of the Southern Surety Company of New York. There has been no other change in the names of the parties.

Statement Under Rule XIII

The summons and the complaint were served personally upon defendant on January 22, 1934, and were filed on January 23, 1934. Defendant's time to answer the complaint was extended from time to time to and including July 3, 1934, and on that day the answer was served upon the attorney for plaintiff and filed. On July 23, 1934, defendant served an amended answer upon the attorney for plaintiff and filed the same on July 24, 1934. By stipulation of the attorneys for the respective parties, dated April 24, 1936 and filed April 28, 1936, and by order of Hon. John C. Knox, United States District Judge for the Southern District of New York, dated April 27, 1936 and filed April 28, 1936, defendant was allowed to further amend its answer. The answer as so amended was served on April 24, 1936 and filed on April 28, 1936.

Upon plaintiff's motion and by order of the Court dated February 18, 1936 and filed February 19, 1936, the case was granted a preference and was placed on the day calendar of common law actions for trial at the March, 1936 Term of the Court.

On March 30, 1936, a stipulation in writing was signed by the attorneys for both parties hereto that a trial by jury be waived. Said stipulation was submitted to the Calendar Clerk of the United States District Court for the Southern District of New York on March 30, 1936 and was filed at the opening of the trial of the cause on June 22, 1936. An agreed statement of all the facts in the action was signed by the attorneys for both parties on March 30, 1936, and was filed at the opening of the trial on June 22, 1936.

Statement Under Rule XIII

The trial was held before Hon. Alfred C. Coxe on the 22nd day of June, 1936, without a jury, at a term of the District Court for the Southern District of New York for the trial of actions at law.

The opinion of Hon. Alfred C. Coxe (No. 9931) was dated and filed July 9, 1936. On August 20, 1936, a final judgment (No. 36,396) was signed and entered herein in favor of plaintiff against defendant in the amount of $4,125.60.

There has been no change in the attorneys for defendant. By stipulation dated October 11, 1935 and filed October 17, 1935, Walter B. Herendeen, Esq., was substituted for Louis H. Pink, Esq., as attorney for plaintiff. By stipulation dated January 25, 1936 and filed January 30, 1936, Eugene M. Clennon, Esq., was substituted for said Walter B. Herendeen, Esq., as attorney for plaintiff. By stipulation dated October 2, 1936 and filed October 8, 1936, Alfred C. Bennett, Esq., was substituted for said Eugene M. Clennon, Esq., as attorney for plaintiff, and said Alfred C. Bennett, Esq., is the attorney of record for plaintiff on this appeal.

There has been no arrest or bail taken, or property attached or arrested in this action. No question was referred to a commissioner, master or referee.

Pursuant to a stipulation signed by the attorneys for both parties, dated August 5, 1936, and filed September 28, 1936, defendant's bill of exceptions was allowed by order of Hon. Alfred C. Coxe, United States District Judge for the Southern District of New York, dated September 26, 1936 and filed September 28, 1936, and the bill of exceptions was filed September 28, 1936.

Defendant's petition for appeal, assignment of errors, undertaking on appeal and citation on ap-